IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2094 OF 1999

The State of Maharashtra. ...Applicant
V/s.
Shri U.S. Mendjoge & Ors. ...Respondents

Mr.Rajesh More, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 20, 2006

P.C. :-

. Heard learned APP for the State. None appears for the respondents though served.

. The State is challenging the order passed by the Metropolitan Magistrate, 44th Court, Andheri, Mumbai, in Criminal Case No.115/P/99 in which the Magistrate was pleased to return the chargehseet to the concerned Police Station as it did not contend any particulars in the chargesheet regarding the arrest of the accused in the cognisable offence which was alleged to have been comitted by the accused.

2. Learned APP appearing has relied on the Judgment

of the Gujarat High Court reported in **1983, Criminal Law Journal 1583 in the case of Deendayal Kishanchand & Ors. v/s. State of Gujarat**, in support of the said submission. The Gujarat High Court held that refusal by the Criminal Courts to accept the chargesheet without production of the accused persons was not justified by any provision of law and accordingly, a direction was given to the lower Courts that chargesheet should be accepted whenever it is produced by the Magistrate. Learned APP also relied on a Judgment of this Court in the case of **The State of Maharashtra V/s. Fulchand Dagadoo & Ors., reported in 1981 Criminal Law Journal 503** in which this Court has held that taking of cognisance under Section 190 does not depend upon the presence of the accused in the court.

3. There cannot be dispute regarding the ratio laid down by the aforesaid two Judgments. However, in the present case, the Magistrate has observed that since the offence which is alleged to have been committed by the accused is a cognisable offence, no particulars have been given in the chargesheet regarding arrest of the

accused. Section 173(2)(i) stipulates that certain particulars should be mentioned in the chargesheet. Clause (e) of the said subclause stipulates that the particulars regarding the arrest of the accused should be mentioned.

4. Thus, in my view, the trial Court had not erred in passing the said order as no particulars regarding the arrest of the accused had been mentioned. It was open for the Investigating Officer to have stated that the arrest of the accused is deferred and till what period, the arrest is deferred, However, some particulars had to be stated in the said application. I do not see any reason to interfere with the order passed by the Metropolitan Magistrate. It is open for the applicant to have given the particulars as required under Section 173.

5. With these directions, Criminal Application is rejected.

(V.M. KANADE, J.)